



Freedom of Information Internal Review Decision

Internal Reviewer: David Attfield - Litigation Lawyer, BBC

Reference: RFI2008029

Date: 11th September 2008

Original request and the BBC's decision:

The requestor asked that, for each of the last 10 years, the BBC makes available the number of search warrants obtained by the BBC or its agents to look for television reception equipment. The requestor asked that this information be broken down by year.

The BBC, in its initial response to this request, determined that the information sought fell within the 'law enforcement' exemptions set out in sections 31 (1) (a), (b), (d) and (g) and section 31 (2) (a) of the Act. This was because the BBC claimed that disclosure would, or would be likely to, prejudice:

1. The prevention or detection of crime (Section 31 (1) (a)),
2. The apprehension or prosecution of offenders (Section 31 (1) (b)),
3. The collection of the license fee (Section 31 (1) (d)),
4. The BBC's ability to discharge its functions of ascertaining whether any person has failed to comply with the law (Section 31 (1) (g) and Section 31 (2) (a)).

The requestor has now asked that there be a review of the BBC's decision to withhold the requested information under Section 31 of the Act. Accordingly, in this review I consider the BBC's responses to the first and third requests.

Issues on review

1. Whether the Section 31 'law enforcement' exemption applies to the information sought by the requestor because one or more of the requirements set out in Section 31 (1) (a) to (g) is satisfied.
2. If the Section 31 exemption does apply, whether there is an overriding public interest in disclosure.

Background

In undertaking this review, I have considered the provisions of the Act and the guidance issued by the Department for Constitutional Affairs and the Information Commissioner's Office. I have also considered information provided to me on a confidential basis by the BBC's Licence Fee Unit together with other publicly available information.

1. Did the BBC correctly apply the Section 31 (law enforcement) exemption in this case?

I have noted the guidance on the application of Section 31 issued by the Department for Constitutional Affairs which states that prejudicial disclosures can include information relating to strategies and tactics in seeking to prevent crime and that such disclosure has a high potential to undermine legitimate objectives carried out in the public interest. The guidance makes clear that this section is not confined solely to the police but also to other public authorities, which would include the BBC in its capacity as the Licensing Authority.

I have also noted guidance issued by the Information Commissioner's Office on the application of Section 31 and the ICO's Decision Notice of 19 May 2008 (Ref. FS50137475). Together, these make clear that the Section 31 exemption will apply where releasing information may well prejudice efforts to prevent crime by changing public perceptions regarding the detection of crime and enforcement of the law.

I have seen strong evidence that, whilst the licence fee enjoys considerable support, there is a body of the public who object to having to pay it and/or who seek to avoid paying it. There is a willingness amongst some of these people to share information about how to avoid payment, which includes online discussions about the detection and enforcement tactics deployed in order to collect the licence fee.

The information sought is likely to influence the public's perception of detection tactics and is likely, accordingly, to impact on public behaviour regarding the voluntary paying of the TV licence fee. Because of this, it is my view that disclosure of the information would be likely to prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; and the ability of the BBC as the Licensing Authority to collect the licence fee.

The requestor argues that any such prejudice would reduce over time. However, the number of search warrants in any one year is likely to correlate with the numbers in previous and subsequent years. In the absence of information showing there has been a substantial change of policy, I do not accept that the prejudice declines substantially over a 10 year period.

It is also my view therefore that disclosure of the information would prejudice the BBC in its role in determining whether individuals have failed to comply with the law in respect of the TV licence. Therefore, the information sought in the first request is exempt information under Section 31 (1) (a), (b) and (d) of the Act and under Section 31 (1) (g) and Section 31 (2) (a).

2. Is there an overriding wider public interest in disclosure?

There are significant public interest factors in favour of disclosure of the information sought, which I identify as:

1. Ensuring that the BBC is exercising its Licensing Authority functions appropriately and proportionately, in particular relating to its policy of applying for search warrants.
2. Providing the public with a better understanding of the BBC's use of its statutory powers as the Licensing Authority relating to the collection of the license fee.
3. Ensuring that public funds are being appropriately and efficiently applied towards ensuring compliance with TV licensing obligations.

However, in assessing the extent of this public interest, it is important to bear in mind the other means by which these public interests are to an extent fulfilled. I have in mind in particular the fact that search warrants are subject to strict requirements and are granted by a neutral third party (a magistrate in the case of England and Wales) who considers the evidence and the public interest in each individual case. Whilst the magistrate (in England and Wales) would not be required to assess the underlying policy regarding the obtaining of search warrants, other information issued by the BBC ensures that the public has an understanding of the BBC's use of its statutory powers relating to the collection of the licence fee which includes the BBC's policy on search warrants. Further, the public interest in ensuring that value for money is being obtained is to at least some extent satisfied by the National Audit Office which assesses and reports on the value for money of the BBC's collection and enforcement arrangements. Further, additional information relating to the cost of the TV licensing system is published by the BBC including in the BBC's annual report and in the TV licensing annual review.

In the context of the roles performed by these bodies and the information already published by the BBC, there are in my view stronger countervailing factors against disclosure:

1. The importance of maintaining effective deterrence. This is a key aspect of TV licence enforcement. Without effective deterrence, the cost of TV licence collection and enforcement would undoubtedly increase which would not be in the interests of TV licence fee payers. I am satisfied that disclosure of the information sought (either on its own or combined with other information relating to detection and enforcement) would undermine this deterrence.
2. It is in the public interest that crimes are detected and, where appropriate, prosecuted. I am satisfied that disclosure of the information sought, in particular if combined with other information relating to detection and enforcement, is likely to influence the behaviour of a body of the public with regard to complying with their TV licence obligations and that this would prejudice the detection and prosecution of TV licence fee evaders.
3. There is a public interest in the BBC being able to collect all of the money it is entitled to by way of the licence fee so as to ensure that the BBC receives the full level of funds for its activities. The disclosure of the information sought, in particular if combined with other information relating to detection and enforcement, is likely to impact negatively on the amount of money that the BBC is able to collect.

Decision

I endorse the BBC's original decision that the information sought is exempt because its disclosure would, or would be likely to, prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; and the ability of the BBC as the Licensing Authority to collect the licence fee. The information would also be likely to prejudice the BBC in its role in determining whether individuals have failed to comply with the law in respect of the TV licence. In all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.